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THE PRUDENTIAL INSURANCE  
COMPANY OF AMERICA, INC.

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**WESTERN DIVISION**

DOMINIQUE OSBORNE, on her own  
behalf on behalf of a class of similarly  
situated persons pursuant to F.R.C.P.  
23 and U.S.C. 216, and on behalf of  
the General Public,

Plaintiffs,

v.

THE PRUDENTIAL INSURANCE  
COMPANY OF AMERICA, a New  
Jersey Corporation,

Defendant.

Case No. CV10-2465 JFW (CWx)

*The Hon. John F. Walter*

**DEFENDANT PRUDENTIAL  
INSURANCE COMPANY OF  
AMERICA, INC.'S NOTICE OF  
MOTION AND MOTION FOR  
SUMMARY JUDGMENT**

Date: December 6, 2010  
Time: 1:30 p.m.  
Courtroom: 16

Complaint Filed: April 5, 2010  
Discovery Cutoff: March 1, 2011  
Motion Cutoff: March 28, 2011  
Pre-Trial Conf.: May 6, 2011  
Trial Date: May 24, 2011

1 TO PLAINTIFF, DOMINIQUE OSBORNE, AND HER COUNSEL OF  
 2 RECORD, TEEPLE HALL, LLP:

3 PLEASE TAKE NOTICE that on December 6, 2010, at 1:30 p.m., or as  
 4 soon thereafter as the matter may be heard, in the above-captioned Court, in the  
 5 Courtroom of the Honorable John F. Walter, located at 312 N. Spring Street,  
 6 Los Angeles, California, Defendant Prudential Insurance Company of America,  
 7 Inc. ("Defendant" or "Prudential") will and hereby does move this Court for  
 8 summary judgment as to the entire action filed by Plaintiff Dominique Osborne  
 9 ("Plaintiff") on the ground that there is no triable issue as to any material fact, as  
 10 follows:

11 1. Plaintiff's Complaint contains a single cause of action for "unpaid  
 12 overtime," in violation of the Fair Labor Standards Act ("FLSA") 29 U.S.C.  
 13 § 207(a)(1).<sup>1</sup> However, it is undisputed that Plaintiff is not entitled to overtime pay  
 14 because she never worked in excess of 40 hours per week.

15 2. Given that Plaintiff is not entitled to overtime pay, her only other  
 16 means for recovery is a violation of the minimum wage requirements of the FLSA,  
 17 29 U.S.C. § 206(a)(1). However, it is undisputed that Plaintiff always earned in  
 18 excess of the federal minimum wage, even if all of her alleged extra time worked is  
 19 considered.

20 3. Plaintiff cannot recover damages, either as a violation of the overtime  
 21 requirements or the minimum wage requirements, because she deliberately failed  
 22 to notify Prudential of any alleged extra time worked. It is undisputed that Plaintiff  
 23 was required to record all extra time worked on her daily time records and her  
 24 daily production logs. Plaintiff was aware of these requirements, but deliberately

25  
 26 <sup>1</sup> Plaintiff's second and third causes of action are based on the Employee  
 27 Retirement Income Security Act of 1974 ("ERISA") 29 U.S.C. § 1001 *et seq.* The  
 28 second and third causes of action were dismissed voluntarily by Plaintiff, pursuant  
 to Fed. R. Civ. Proc. 41, in a stipulation for dismissal filed with the Court on June  
 17, 2010.

1 chose not to record any extra time, which was a violation of company policy. As a  
2 result, Plaintiff cannot now claim she is entitled to unpaid wages based on alleged  
3 extra time worked that was never reported.

4 4. Plaintiff cannot recover unpaid wages, either as a violation of  
5 overtime pay requirements or minimum wage requirements, because any alleged  
6 extra time worked was *de minimis*. It is undisputed that Plaintiff's alleged extra  
7 time worked amounted to less than 10 minutes per day. Such alleged extra time of  
8 10 minutes or less per day is considered *de minimis* and, therefore, not  
9 compensable.

10 This Motion is based upon this Notice of Motion and Motion, the  
11 accompanying Memorandum of Points and Authorities, the Statement of  
12 Uncontroverted Facts and Conclusions of Law, the Declaration of Jon D. Meer  
13 attaching the evidence cited herein, all of such documents are filed herewith; the  
14 deposition transcript of Plaintiff; all pleadings and papers on file in this action; and  
15 such other matters as may be presented to the Court prior to or at the hearing.

16  
17  
18 DATED: November 8, 2010

**SEYFARTH SHAW LLP**

19  
20 By: /s/ Jon D. Meer

**JON D. MEER**

21 Attorneys for Defendant  
22 THE PRUDENTIAL INSURANCE  
23 COMPANY OF AMERICA, INC.  
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